

December 30, 1960

*File* - MEMORANDUM OF CONVERSATION BETWEEN VICTOR FOLSOM,  
GENERAL COUNSEL, UNITED FRUIT COMPANY, AND AMBASSADOR  
WILLAUER AT 12:30 PM, DECEMBER 30, 1960, RE: DECISION ON  
RAILROAD CASE IN GUATEMALA.

(1) On December 1, 1960, the Court of Appeals of the State of New York in the case of Ripley versus IRCA and United Fruit Company, handed down an unrevised and to be edited decision. The Court is located in New York City somewhere on Madison Avenue. Anyone who asks for the decision may be told that there isn't one, but a little digging will pull it out.

(2) The judgment in the case is based upon the theory that IRCA, with a 39 per cent ownership by the United Fruit Company, was unconscionably influenced by the United Fruit Company in entering into a contract for the carriage of bananas in 1933 (revised in 1936), at the rate of \$60.00 a ton, and that this contract should be left in operation until 1963, but that the rate for carriage of bananas should be increased to \$130.00 a ton.

The Court further decided that damages to IRCA should be immediately collected from the United Fruit Company under the finding of the referee, in the sum of four and one-half million dollars covering the period from 1933 to 1956, and that there should be added to these damages another finding for what has occurred from 1956 to date.

(3) The damages as finally determined shall be paid to IRCA into its general funds. There is a belief that the common stock holders of IRCA will be benefited by receiving all or part of this payment. This is impossible for the following reasons:

(a) The United Fruit Company holds notes of IRCA in the amounts of \$1,600,000 and \$1,700,000, plus a substantial arrearage in interest. There may be some question or argument about the \$1,700,000, but assuming that this can be resolved in favor of the Fruit Company, Folsom estimates that United Fruit Company's offset will leave them about a million dollars short of paying the \$4,500,000 judgment plus added damages between 1956 and 1960.

(4) According to Folsom, several years ago the government of Guatemala carried on negotiations with United Fruit Company with a view to buying IRCA. As a result of this, the Fruit Company feels that they have a moral obligation to give the United Fruit Company a first refusal on their stock. Additionally, United Fruit Company feels that being in a public utility is bad business for them, politically and otherwise, as pointed out below.

(5) The approximate stock ownership position is as follows:

(a) Common stock -- 500,000 shares of which 233,000 are owned by the United Fruit Company at a current market price of \$10.00 a share. This means that the common stock has an ostensible value of \$5,000,000.

(b) There are 100,000 outstanding shares of preferred stock with a current market value of \$58.00, in which is reflected (or possibly to which might be added) \$50.00 per share of arrears in interest payments. If the current market value reflects the \$50.00 of arrears, then the preferred is worth \$5,800,000; if not, possibly \$10,800,000.

(6) Folsom's recommendation to the Fruit Company is that they sell their common stock to the Guatemalan government -- or at the very least unload it in some manner. As he points out, it is obvious that with the Court's finding that their stock position caused unconscionable influence in connection with the freight rates, they must get rid of this stock in order to negotiate a new freight rate because the Court's finding of \$130.00 freight rate is something they cannot accept.

(7) I got the impression that the United Fruit Company would be glad to get out for a million dollars plus a deal on the freight rate, and the further impression that if the deal on the freight rate was good enough, they don't care much about the million dollars. Obviously this is only my impression, but I bet I'm right. I also am prepared to bet that the price tag on cleaning this whole thing up is closer to five million dollars than the fifteen million mentioned previously in discussions.

Ambassador Whiting Willauer

WW:at

Distribution:

- Orig - Hon. Allen W. Dulles ✓
- 2 cc - Amb. Willauer
- 1 cc - Hon. Livingston Merchant (Further to my memo of this morning)
- 1 cc - Hon. Thomas Mann
- 1 cc - Mr. Tracy Barnes